

**REMARKS/ARGUMENTS**

Examiner Jeanty has rejected the originally filed claims 1-6 under 35 U.S.C. 102(e) as being anticipated by D'Alessandro (U.S. Patent No. 6,556,974). Claims 1, 3 and 5 have been amended to further define and distinguish the present invention. Support for these changes can be found in the specification, drawings, and claims as originally filed. Reconsideration of this application is respectfully requested.

Claim 1, as amended, claims "a data storage medium storing a plurality of inquiries regarding the performance of an employee of the business and a plurality of behavior based responses for each of the plurality of inquiries, with each of the plurality of behavior based responses having a value assigned according to the desirability to the business of the behavior based response." Thus the present invention provides inquiries with responses that are behaviors, with the behaviors having an assigned value. By contrast, D'Alessandro provides a survey that uses a Likert Scale, where the responses are not behavior based. Thus, in the present invention, behaviors have values assigned according to the desirability of the behavior to a business. Thus, the present invention allows for different behaviors to be presented as responses to a single inquiry, whereas D'Alessandro is limited to a scale measuring agreement to a statement.

Likewise, Bonnstetter (U.S. Patent No. 5,551,880) does not provide an inquiry with behavior based responses having a value assigned according to the desirability to the business of the response. Bonnstetter provides only a subjective behavior survey based on William Moulton Marsten's book entitled "*Emotions of Normal People*" and a values survey derived from Edward Springer's book entitled "*Types of Men*". Bonnstetter's inquiries use responses to determine a personality type where responses are indicative of a personality type and do not have a value assigned according to the desirability to the business of the response. Thus, the present invention provides for at least one measure of performance, whereas Bonnstetter cannot provide a measure of performance.

Similarly, claims 3 and 5, as amended, teach the use of inquiries with a plurality of behavior based responses having a value assigned according to the desirability to the business of the response and also teaches providing at least one measure of performance. As shown above, D'Alessandro and Bonnstetter do not provide these aspects of the present invention. Therefore, claims 1, 3, and 5 are allowable over the prior art of record. Claims 2, 4, and 6 are also

allowable as depending from allowable claims 1, 3, and 5, respectively, and as further defining and distinguishing over the prior art of record.

Therefore, since the claims of the present invention have been shown to include limitations directed to the features of the applicants' business evaluation apparatus and methods that are neither shown, described, taught, nor alluded to in any of the references cited by the Examiner, whether those references are taken singly or in any combination, applicants' respectfully request the Examiner to allow claims 1-6, as amended, of the present application and to pass this application to issue.

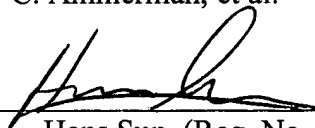
In view of the foregoing amendments, it is believed that the application is now in condition for allowance and such action is respectfully requested. If any points remain an issue which the Examiner feels could best be resolved by either a personal or telephone interview, the Examiner is urged to contact applicants' attorney at the number listed below.

Respectfully submitted,

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By: \_\_\_\_\_



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